

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

IN RE:

14-MD-2543 (JMF)
17-CV-5970 (JMF)

GM LLC IGNITION SWITCH LITIGATION

Hon. Jesse M. Furman

This Document Relates to Garcia v. GM LLC

**NEW GM'S MOTION TO DISMISS WITHOUT PREJUDICE FOR FAILURE TO
SUBMIT DISCOVERY REQUIRED BY ORDER NOS. 25 AND 108**

Order No. 25 requires that every plaintiff asserting a personal injury or wrongful death claim in a case entered on the MDL 2543 docket must submit a substantially complete Plaintiff Fact Sheet ("PFS") within 40 days after the complaint has been entered. (Order No. 25 ¶¶ 14-16 (Docket No. 422).) Additionally, Order No. 108 requires that every post-Sale plaintiff asserting a personal injury or wrongful death claim must produce specific core documents relevant to their claims (including through making good-faith requests for documents from third parties) or provide written confirmation that such documents do not exist within 90 days after the complaint has been entered on the MDL 2543 docket. (Order No. 108 ¶ 1, Docket No. 3115; Order No. 110 ¶ 1, Docket No. 3152.) Minor A.G., represented by next friend Sylvia Garcia, has not complied with these Orders.

Pursuant to Order No. 25 ¶ 24 and Order No. 110 ¶ 2, on July 6, 2020, New GM served minor A.G., through next friend Ms. Garcia, with a Notice of Overdue Discovery, identifying minor A.G.'s overdue discovery and notifying him that his case may be subject to dismissal for failure to comply with the Court's discovery orders. (Docket No. 8031.) Minor A.G. was required to submit a completed PFS and materials required by Order No. 108 on or before July 20, 2020, or risk having his claim dismissed. (Order No. 25 ¶ 24, Order No. 110 ¶ 2.)

On July 16, 2020, Ms. Garcia provided additional materials on behalf of minor A.G. These materials are still incomplete. In particular, minor A.G.’s education authorization is completed incorrectly, because it has the name and address of a particular school listed. These fields should be left blank. Additionally, minor A.G. has still not provided any medical records or bills. Correspondence from Ms. Garcia indicates that “plaintiff does not have medical records or bills in its possession, custody or control,” and that “[a]uthorizations have been previously provided to Defendant to obtain medical records and medical bills for the minor AG.” A copy of this correspondence is attached hereto as Exhibit A.

However, Order No. 108 requires that “for any documents not currently in the possession of the MDL No. 2543 Plaintiff or his or her attorney, the Plaintiff shall comply with this Order by making a good-faith request for the document from the person reasonably believed to have possession of it. Plaintiffs making such a request shall provide a copy of the requesting communication to New GM.” (Docket No. 3115.) Alternatively, “[f]or any category of documents that do not exist, Plaintiff shall provide New GM with written confirmation that no such documents exist.” (*Id.* ¶ 1.) These requirements apply to medical records and, if a plaintiff is asserting a claim pertaining to unpaid medical bills, medical bills. (Order No. 108 ¶ 1.)

Minor A.G. has not provided New GM a copy of the communication(s) requesting medical records and medical bills, nor has he provided New GM with written confirmation that medical records and medical bills do not exist. Minor A.G. has also not provided New GM with written confirmation that he is not asserting a claim pertaining to unpaid medical bills.

Pursuant to Order Nos. 25 and 72 (Docket No. 1237), as well as Order Nos. 108 and 110, New GM hereby moves to dismiss, without prejudice, the claims of minor A.G. for failure to submit a completed PFS and the required Order No. 108 materials. Under Order No. 25 ¶ 24 and

Order No. 110 ¶ 2, minor A.G. must file a response no later than August 7, 2020, either (a) certifying that he has submitted a completed PFS and the materials required by Order No. 108 or (b) opposing the Motion for other reasons.¹

Dated: July 24, 2020

/s/ Andrew B. Bloomer, P.C.

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¹ If minor A.G. fails to file a response by August 7, 2020, his claims may be dismissed without prejudice. (Order No. 25 ¶ 24, Order No. 110 ¶ 2.) Such dismissal without prejudice may be converted to a dismissal with prejudice after 30 days if he does not provide the required materials or move to vacate the dismissal without prejudice. (Order No. 25 ¶ 25, Order No. 110 ¶ 3.)

CERTIFICATE OF SERVICE

I hereby certify that on July 24, 2020, I electronically served the foregoing Motion on all counsel of record in this action using the CM/ECF system, and that a copy was mailed to Ms. Garcia, next friend of minor A.G., at her last known address as well as emailed to Ms. Garcia at her last known email address.

/s/ Andrew B. Bloomer, P.C. _____

Andrew B. Bloomer, P.C.